

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

KERRY DIMART ALLEN,	§	
Petitioner,	§	
v.	§	CIV. ACTION NO. 4:11-mc-1676
	§	ECF
RICK THALER,	§	
Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
Respondent.	§	
	§	

**RESPONDENT THALER'S NOTICE OF WITHDRAWAL**

This case involves a federal habeas proceeding filed pursuant to 28 U.S.C. § 2254 by Texas death row inmate Kerry Dimart Allen. The Director attempted to file a response in opposition to petitioner's motion to stay further proceedings and hold his case in abeyance. *See* Opposed Motion, ECF No. 8 and 9. However, after filing, the Director realized that document ECF No. 8 was incorrectly formatted, and both documents ECF No.'s 8 and 9 were incorrectly captioned. The Director now asks the Court to please withdraw both documents and consider instead Respondent Thaler's Opposition to Motion to Stay Further Proceedings and Hold this Case in Abeyance, filed following this Notice of Withdrawal.

Respectfully submitted,

**GREG ABBOTT**  
Attorney General of Texas

**DANIEL T. HODGE**  
First Assistant Attorney General

**DON CLEMMER**  
Deputy Attorney General for Criminal Justice

**EDWARD L. MARSHALL**  
Chief, Postconviction Litigation Division

/s/ Tomee M. Heining

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**\*TOMEET M. HEINING**

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**ATTORNEYS FOR RESPONDENT**

## CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2011, I electronically filed the foregoing document with the clerk of the court for the United States District Court, Southern District of Texas, using the electronic filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the following attorneys of record who has consented in writing to accept this Notice as service of this document by electronic means: Seth Kretzer and Jonathan Landers.

/s/ Tomee M. Heining

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TOME M. HEINING  
Postconviction Litigation Division